

Judicial Review of Agency Statutory Interpretations: Foundational Cases

LWELA 944: Administrative Law

Penn State Dickinson Law

March 31, 2026



Gray v. Powell

Some questions

- What are the two questions before the Court in Gray v. Powell?



Gray v. Powell

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- How would you characterize the deference, if any, the Court gives the agency's conclusions on these questions?



Gray v. Powell

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- What are the two questions before the Court in Gray v. Powell?
- How would you characterize the deference, if any, the Court gives the agency's conclusions on these questions?
- Can you think of anything that might account for the difference?



Gray v. Powell

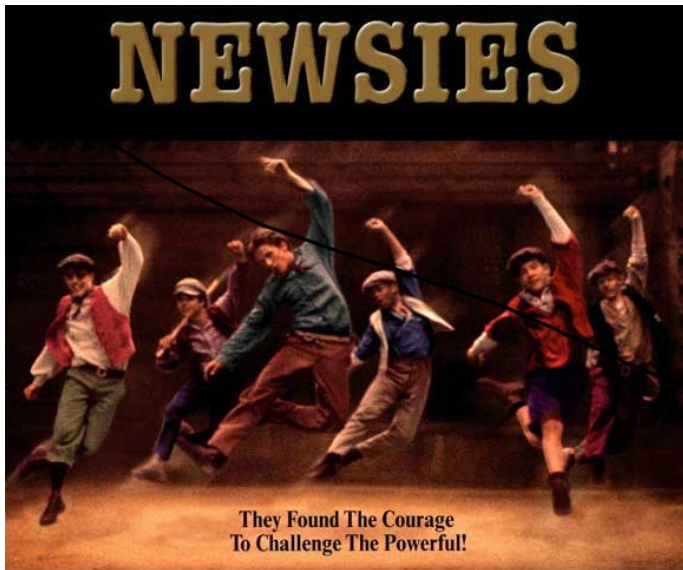
Questions before the Court, and how it answers

Question:	Court says:
Is Seaboard a producer?	no (deferentially)
Was there a sale of coal?	yes (not deferentially)



NLRB v. Hearst

Like this, but with less dancing



Sorting facts into law



State

en route to Chevron: Skidmore deference

Skidmore v. Swift, 323 U.S. 134, 140 (1944)

“We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”



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Chevron and Loper Bright

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Mapping judicial review

kind of determination:	kind of review:
questions of fact	substantial evidence review
questions of law	<u>Loper Bright</u> and related doctrines
questions of policy	arbitrary and capricious review

NOTE: this is a simplification, but a helpful way to think about how these doctrines generally fit together.



Chevron: relevant statutory language

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§302(j) Except as otherwise expressly provided, the terms “major stationary source” and “major emitting facility” mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).



Chevron: relevant statutory language

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- §111(a)(3) The term “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant.



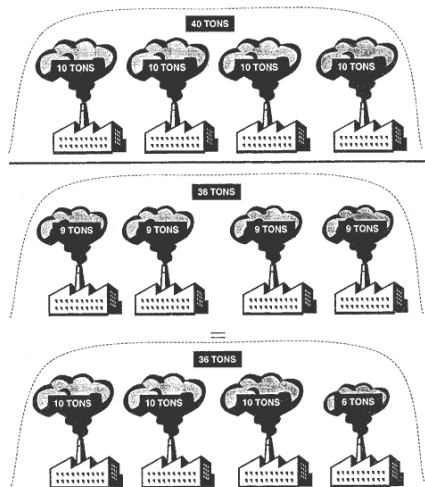
Chevron's question: what is a source?



State



The Bubble Concept



BUBBLING

The Chevron two-step

- 1 Has Congress spoken directly to the precise question at issue?



The Chevron two-step

- 1 Has Congress spoken directly to the precise question at issue?
- 2 Is the agency's answer based on a permissible construction of the statute (i.e., is it reasonable)?



Chevron

How to determine Congress's intent

Chevron footnote 9

The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. **If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.**



Loper Bright Enterprises, Inc. v. Raimondo

Cause of Action Institute video



Loper Bright Enterprises, Inc. v. Raimondo

Magnuson-Stevens Fishery Conservation and Management Act

16 U.S.C. § 1853(b)

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

. . . .

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;



Major Questions Doctrine

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West Virginia v. EPA: Questions

- In the Clean Air Act, what are the New Source Performance Standards program, the National Ambient Air Quality Standards (NAAQS) program, and the Hazardous Air Pollutants (HAP) program?



West Virginia v. EPA: Questions

- In the Clean Air Act, what are the New Source Performance Standards program, the National Ambient Air Quality Standards (NAAQS) program, and the Hazardous Air Pollutants (HAP) program?
- What does CAA section 111(d) do?



West Virginia v. EPA: Questions

- In the Clean Air Act, what are the New Source Performance Standards program, the National Ambient Air Quality Standards (NAAQS) program, and the Hazardous Air Pollutants (HAP) program?
- What does CAA section 111(d) do?
- What are the three “building blocks” in the “best system of emission reduction” (BSER) in the EPA’s rule for carbon dioxide emissions from existing coal-fired power plants?

